

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
MAY 01 2018
Clerk, U.S. Courts
District Of Montana
Missoula Division

BENJAMIN LLEWELLYN,

Petitioner,

vs.

JAMES SALMONSON,

Respondent.

Cause No. CV 18-37-M-DLC-JCL

ORDER

This case comes before the Court on Petitioner Benjamin Llewellyn's application for writ of habeas corpus under 28 U.S.C. § 2254. Llewellyn is a state prisoner proceeding pro se.

On February 20, 2018, Llewellyn joined a group of prisoners in filing an "en masse" habeas petition. This Court subsequently issued an order to Petitioner directing him to advise the Court if he did wish to proceed in this habeas matter and, if so, requiring Petitioner to complete and file this Court's standard § 2254 habeas form. (Doc. 1.)

Llewellyn failed to timely respond to the Court's Order and Magistrate Judge Jeremiah C. Lynch thereafter issued his Order and Findings and Recommendations (Doc. 5) on March 27, 2018. Llewellyn objected to Judge Lynch's Order and Findings and Recommendations on April 9, 2018 (Doc. 6).

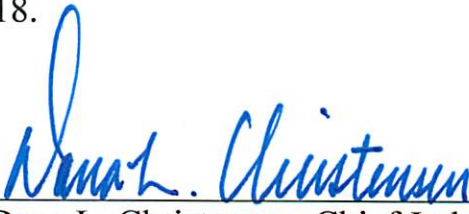
Judge Lynch then issued an Amended Order and Findings and Recommendations (Doc. 7) on April 18, 2018. Judge Lynch recommended dismissal without prejudice because Llewellyn had not filed an individual petition for habeas corpus relief as directed. (Doc. 7 at 4–5.)

On April 23, 2018, Llewellyn filed a Motion to Sever and Withdraw from En Masse Petition and Supplement Petition Without Prejudice (Doc. 8). Llewellyn advised the Court that he wished to be severed from the en masse group and to be allowed to withdraw the pending petition so that he may exhaust his state remedies. (Doc. 8 at 1–2). Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides Llewellyn with an avenue for voluntary dismissal. Accordingly,

IT IS ORDERED that Llewellyn’s Motion to Sever and Withdraw (Doc. 8) is GRANTED. This matter is DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(a)(1)(B). Llewellyn may return to this Court if and when he has exhausted his state remedies.

IT IS FURTHER ORDERED that Judge Lynch’s Order and Findings and Recommendations (Doc. 5) and Amended Order and Findings and Recommendations (Doc. 7) are REJECTED AS MOOT.

DATED this 1st day of May 2018.



Dana L. Christensen, Chief Judge
United States District Court